92-1535

Supreme Court, U.S.
FILED
MAY 4 1992
OFFICE OF THE CLERK

No.

IN THE UNITED STATES SUPREME COURT

October TERM, 1992

LORING M. CANEY, JR.
Petitioner,

v.

UNITED STATES DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeal for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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Pro Se

October 15, 1992

QUESTIONS PRESENTED FOR REVIEW

This case presents the following questions for review:

1. May a Federal Employee be prohibited from filing and administrative appeal of a Personnel Action after a filing deadline when the reason for the untimely filing was a result of Agency misconduct.

2. Whether a Petition for review of an Order of the Merit Systems Protection Board may be dismissed as being untimely filed when new and critical evidence concerning the basis of the appeal becomes available, and was not readily available during the time frame allowable for appeal.

3. Should a personnel action resulting in a suspension of less than 14 days be able to be appealed to a court, or some other independent appellate body, where such personnel action violates law, rule, or regulation.

TABLE OF CONTENTS

	PAGE
The Questions Presented for Review	1
Table of Contents	3
Table of Authorities	4
Opinions Below	5
Jurisdiction	6
Constitutional Provision Involved	6
Statement of the Case	7
Argument	11
Conclusion	26
Certificate of Service	29
Appendix	30

TABLE OF AUTHORITIES

	Page
Maake v. United States Civil Service Commission et al., 634 F.2d 341(1980):	11
California Pacific Utilities v. United States, 194 Ct. Cl, 703, 717 (1971):	13
28 U.S.C. Section 1254 (1):	6
42 U.S.C. Section 1983:	7
Policies Manual of the Internal Revenue Service, Section (P-0-66) (12/13/63):	22
Internal Revenue Service Handbook of Employees Responsibilities and Conduct, Paragraph 225.5 (4/27/79):	23
IRS Grievance Handbook at 0771.1-11, Section 133 (e):	22
United States Constitution, Fourteenth Amendment:	6

OPINIONS BELOW

The MSPB Opinion and Order was reported on May 17, 1991. The United States Court of Appeals Notice of Entry of Judgement Without Opinion was reported on February 6, 1992. The Judgement of the United States Court of Appeals for the Federal Circuit was reported on February 6, 1992.

JURISDICTION

The Judgement of the Court of Appeals for the Federal Circuit was made and entered on February 6, 1992. The J risdiction of this court is invoked under 28 U.S.C. Section 1254 (1).

C NSTITUTIONAL PROVISION AND STATUTE

The Due Process Clause of the United States Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In addition, 42 U.S.C. 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

The questions for review herein were initially before the Merit Systems Protection Board in the case of Loring M. Caney, Jr., Appellant, v. Department of the Treasury, Agency, and subsequently in the United States Court of Appeals for the Federal Circuit in the case of Loring M.

BEST AVAIL

Caney, Jr., Petitioner v. Department of the Treasury, Internal Revenue Service, Respondent. The case revolves around Mr. Caney's termination from employment as a Special Agent of the Internal Revenue Service - Criminal Investigation Division, and a one-day suspension imposed on Mr. Caney prior to his termination from employment. Mr. Caney appealed the procedures that the Internal Revenue Service utilized in negotiating the Settlement Agreement associated with his termination of employment from the IRS; in addition, Mr. Caney also raised the issue that information concerning former DEA Agent Edward K. O'Brien was not readily available during the decision making process associated with his termination from employment. DEA Agent O'Brien was arrested and subsequently prosecuted for DRUG TRAFFICKING, EMBEZZLEMENT of United

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States Government funds, and TAX EVASION. Former Agent O'Brien committed the crimes during, and shortly after the time frame that Mr Caney received a one-day suspension, and which he grieved according to the IRS grievance procedures process, and at the time that Mr. Caney was terminated from his position as a Special Agent from the Internal Revenue Service - Criminal Investigation Division. Former DEA Special Agent O'Brien's alleged testimony (it is considered alleged testimony because documentation has never been obtained in the form of an affidavit documenting O'Brien's actual testimony), that Mr. Caney caused dissension and discord with former DEA Special Agent O'Brien, a convicted Drug Trafficker, Embezzler, and Tax Evader, in essence - a Felon. Former DEA Special Agent O'Brien's behavior and conduct

during the period of time that he was making untruthful allegations about Mr. Caney goes to the heart of this case - it establishes O'Brien's state of mind, and was used to deprive Mr. Caney of one days pay, and subsequently used to deprive Mr. Caney of his job.

Mr. Caney sought relief in the Merit Systems Protection Board via a petition for review, based upon the arrest of former DEA Agent O'Brien, and the misplaced trust that Mr. Caney placed on the terms of the Settlement Agreement. The Merit Systems Protection Board dismissed Mr. Caney's petition for review because he failed to establish good cause for the untimely filing of his petition. The United States Court of Appeals for the Federal Circuit affirmed the MSPB decision on February 6, 1992.

ARGUMENT

1. May a Federal Employee be prohibited from filing and administrative appeal of a Personnel Action after a filing deadline when the reason for the untimely filing was a result of Agency misconduct.

This petition for a writ of certiorari should be granted in reference to the first question posed for review because the United States Court of Appeal for the Sixth Circuit has rendered a decision in conflict with the United States Court of Appeals for the Federal Circuit in Maske v. United States Civil Service Commission et al., 634 F.2d 341 (1980).

In Maske, the Sixth Circuit held that federal employee's, who had been told to

consult a specific employment supervisor concerning procedure for appealing an adverse decision and who were advised by supervisor that appeal of Civil Service Commission decision could be appropriately left with him, were entitled to rely on his assurance; thus, employee appeal of their demotions could not be dismissed as untimely because they relied on that supervisor's word instead of filing their appeal with appropriate authority.

In the case before the court, Mr. Caney was notified by Internal Revenue Service management, and it was agreed to, with, and by IRS management under the terms of a Settlement Agreement, that his appeal of a one day suspension was still pending, and he could appropriately continue to pursue his appeal of the suspension. In addition, the Internal Revenue Service in agreeing to allow Mr.

Caney to pursue the appeal of the grievance, did not set a time limit within which Mr. Caney must pursue the appeal of the grievance, and it is plain that no time limit was implied. Mr. Caney did not learn the he could not pursue his appeal of the suspension in any forum or court of appeal in any jurisdiction until approximately three and one-half years after signing the settlement agreement. As decided under California Pacific Utilities, Inc. v. United States, 194 Ct. Cl. 703, 717 (1971), the unilateral subjective understanding or intent of a party cannot alter the express terms of the contract (i.e. settlement agreement), the settlement agreement specifically allowed Mr. Caney to pursue the appeal of his one-day suspension, and it was acknowledged and agreed to by both parties that there was still pending Mr.

Caney's appeal of his one-day suspension and Mr. Caney may continue to pursue that appeal. The record indicates that in fact the appeal of the one-day suspension was not still pending. Unknown to Mr. Caney, it had already been decided at the time that Mr. Caney had signed the Settlement Agreement. Mr. Caney had no appellate right associated with the one-day suspension at the time that he entered into a good faith agreement with the Internal Revenue service.

Now the Federal Court of Appeals for the Federal Circuit has rendered its decision in conflict with the Sixth Circuit. How in good conscience can this court allow the Internal Revenue Service to assure and employee that he may pursue an appeal of a personnel action, and agree to it under the terms of a Settlement Agreement; then, when the employee pursues the appeal of the grievance, inform him

that he has exhausted his grievance appellate rights, after agreeing that they still existed; then, tell the employee he can pursue the appeal outside of the grievance system, and when the employee appeals outside of the administrative process as directed to do so by the Internal Revenue Service, they deny the remedy; then, after violating their own administrative procedures, argue in the United States District Court that a one-day suspension is precluded by law from being heard in the United States District Court. after previously disregarding their own appellate procedures by allowing the appeal of the grievance to be heard by the IRS Regional Commissioner. The Internal Revenue Service cannot have it both ways, either the one-day suspension was still open at the time Mr. Caney signed the Settlement Agreement, and Mr Caney could

continue to appeal it to the appropriate forum under the terms of the IRS Grievance Procedure process, or it was not still open (which it was not); and therefore, the settlement agreement was flawed. This constitutes unacceptable and unconstitutional behavior which violates the due process provision of the United States Constitution, and also poses a conflict as a result of the Maske decision (634 F.2d 341 (1980) in the United States Court of Appeal for the Sixth Circuit.

2. Whether a Petition for review of an Order of the Merit Systems Protection Board may be dismissed as being untimely filed when new and critical evidence concerning the basis of the appeal becomes available, and was not readily available during the time frame allowable for appeal.

Mr. Caney was given a one-day suspension based, in part, on alleged statements made by former DEA Special Agent Edward K. O'Brien. Mr Caney cited

the arrest of former DEA Agent Edward K. O'Brien on Drug Trafficking, Embezzlement, and Tax Evasion charges as an additional basis of his appeal to the Merit Systems Protection Board. Had this information been available to Mr. Caney during the time allowable for appeal of his termination of employment, Mr. Caney would have certainly used it to his benefit. Mr. Caney has consistently and strenuously denied allegations made about him by former DEA Special Agent O'Brien. Former DEA Agent O'Brien's conduct goes to the heart of the matter - his state of mind is the issue - he was a man with serious personal and financial problems, who would say and do anything when confronted by situations he perceived as a threat. Special Agent O'Brien was a sick man, which was readily noticeable by anyone who worked with him. The situation associated

with Mr. O'Brien's unauthorized knowledge of a United States Postal Service Mail Cover, and Mr. Caney's response in protecting the integrity of the Grand Jury process, precipitated Mr. O'Briens response in making untruthful allegations about Mr. Caney. Now that Mr. Caney has been terminated from his position, and this information in reference to Mr. O'Brien's criminal behavior is available, to deny Mr. Caney the opportunity to now use it is unconstitutional, and violates Mr. Caney's right to Due Process of Law. Due Process is the sum of the facts, it puts the whole story together, it constitutes fair play - it provides a smooth and even playing field for the opponents. At the time of Mr. Caney's termination from employment, for allegedly causing dissension and discord, and when the Internal Revenue Service provided Mr. Caney with a one-day

suspension from employment, it was fair play for Internal Revenue Service management to include the alleged testimony of decorated DEA Agent Edward O'Brien. When it is now apparent that Mr. Caney is telling the truth about O'Briens unlawful knowledge of Grand Jury information, and not obtained as a result of a misdirected Mail Cover as alleged by the Internal Revenue Service and former DEA Agent O'Brien - and the Internal Revenue Service would now have to use the testimony of the Drug Trafficking DEA Agent, Ed O'Brien, if the appeal of the one-day suspension is reopened, the Internal Revenue Service doesn't want to discuss the situation - and falls back on a defense of untimeliness, which they caused to be untimely by providing false information to Mr. Caney in the first place. Mr. Caney is asking this court to

ensure that the decisions of the Merit Systems Protection Board and the United States Court of Appeals for the Federal Circuit are not sustained, in light of the new information concerning former DEA Agent O'Brien. To deny Mr. Caney of the opportunity to reopen his appeal of his one-day suspension is not fair play - it abridges his privilege of being a citizen of the United States, and deprives him of his right to due process and equal protection of the laws.

3. Should a personnel action resulting in a suspension of less than 14 days be able to be appealed to a court, or some other independent appellate body, where such personnel action violates law, rule, or regulation.

In reference to the first question put before the court, when Mr. Caney attempted to pursue the appeal of the one-

day suspension, Mr. Caney was informed he could pursue the appeal with the office of the Regional Commissioner of the Internal Revenue Service in New York.

Mr Caney pursued the appeal to the Regional Commissioner, as directed to do so by the Internal Revenue Service; even though the Internal Revenue Service violated their own policy in directing Mr. Caney to appeal the grievance of the one-day suspension to the Regional Commissioner. When Mr. Caney pursued the appeal of the one-day suspension, after signing the Settlement Agreement, the Internal Revenue Service had no alternative but to violate their own policy, because as noted above, Mr. Caney had exhausted all of his appellate steps prior to signing the Settlement Agreement, even though he was led to believe that his grievance was still pending, and he could assuredly continue to pursue that appeal.

Mr. Caney made his appeal to the Regional Commissioner as documented in a letter dated July 30, 1987. The office of the Regional Commissioner did not sustain Mr. Caney's appeal. At present, there are no avenues of appellate review for procedural errors as documented in the letter to Mr. Brennan; to include, a failure of the grievance examiner to submit a timely finding pursuant to the IRS Grievance Handbook at 0771.1-11, Section 133 (e). In addition to the above, the Policies of the Internal Revenue Service Manual at P-2-66 (approved 12/13/63) are quite clear in that an Employee is to be free from coercion, restraint or reprisal. Supplementing Office of Personal Management Regulations requiring that all employees be free from restraint, interference, coercion, discrimination or

reprisal in the presentation of a grievance, the stating of a grievance shall not cast any reflection on the employee's standing with his/her supervisor, or his/her loyalty and desirability as an employee of the Service. During the time that Mr. Caney was appealing his one day suspension, his job and future career aspirations were threatened as documented in a letter dated January 30, 1992 wherein Richard LaPlante of the Treasury Employees Union states "in view of the fact that your employment was terminated, I can understand your subsequent conclusion that the comments were in fact a threat." In addition, The Internal Revenue Service Handbook of Employees Responsibilities and Conduct at paragraph 225.5 (4/27/79) is clear in that false statements will not be tolerated. "Proper functioning of the Revenue Service requires that the Service, courts, other

Federal agencies and the public be able to rely implicitly on the truthfulness of Revenue Service employees of official interest. An employee may be subjected to severe disciplinary action and prosecution for intentionally making false or misleading verbal or written statements in matters of official interest. Some of these matters of official interest are: transactions with . . . other Federal agencies or fellow employees; . . . which serve as a basis for appointment, reassignment, promotion, or other personnel actions;..." During the period of time; and thereafter, that Mr Caney was appealing the grievance associated with the one-day suspension, he knew that statements made by IRS-Criminal Investigation Division Special Agent (and current IRS Group Manager) D. Parks were false specifically when Ms. Parks stated on February 13, 1987 "...got a call from

the U.S. Attorney's office. Drug Enforcement had gotten a call from the Md. State Police. The troopers weren't sure whose agent had called and told them to let a suspect go (an alleged doper)...upon checking, Debra said, it was Mike who had called." It was determined by Mr. Caney that Ms. Parks had made up the story as documented in a letter from the U.S. Attorneys office dated July 13, 1988, and a subsequent letter from former AUSA Henry Rigali dated August 10, 1988. IRS management has repeatedly violated its own policy, rules, and regulations in its dealings with Mr. Caney, and the violation of the rules constitutes a violation of the due process clause of the United States Constitution. Citizens have to be able to rely upon the rules and regulations as promulgated by the institutions, and the institutions cannot disregard and defy their rules, which they

have promulgated - and not be held accountable for their actions. At present, in the case before the court, Internal Revenue Service management have not followed the law, rules and/or their regulations, and have not been held accountable for their actions in violating the rules and regulations, and in fact have been rewarded for their failure to not follow the regulations. Mr. Caney would like the court to remedy this situation.

CONCLUSION

The decision below squarely conflicts with the Maske decision of the Sixth Circuit. Individuals who enter the employment contract with employers, do not enter with the expectation that they will be threatened, lied to, lied about, and be the recipient of fabricated charges to deprive them of their employment and

future career aspirations. The issues herein are of vital concern both to the nation as a whole, to individual victims of material misrepresentation of fact by governmental representatives, as well as to employees who have received threats on the job of what they better do, or better not do, to keep their jobs - and are too afraid or intimidated to do anything about it - when the threats may affect their jobs, and trash their career aspirations; including, but not limited to individual citizens, government employees, United States Supreme Court nominees and their former employees, members of unions, as well as the Petitioner. The behavior exhibited by Internal Revenue Service management should not be tolerated by anyone, anywhere, at any time for any reason; therefore, for the reasons noted, resolution by the Court of the questions

presented is appropriate, urgent, and right and the Writ of Certiorari should be issued.

Dated this MAR 8 1993

Loring Michael Caney, Pro se.

Respectfully Submitted,

Loring Michael Caney, Jr.
45 Brandywine Drive
Belchertown, MA 01007
(413) 323-5207

Pro Se

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for Writ of Certiorari were mailed to Mr. Mark Melnick, Department of Justice, 550 11th Street, N.W., Room 7106, Washington, D.C. 20530 and to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530 by regular United States Mail this

MAR 8 1993

Loring Michael Caney, Jr.

BEST AVAILA

APPENDIX

USCA Notice of Entry of Judgement A-1

Judgement of the USCA A-2

Mem. Opinion and Order A-3

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United States Court of Appeals for the Federal Circuit

NOTICE OF ENTRY OF JUDGMENT WITHOUT OPINION

JUDGMENT ENTERED: Feb. 6, 1992

The judgment of the court in your case was entered today pursuant to Rule 36. No opinion accompanied the judgment. The mandate will be issued in due course.

Costs may be recoverable under Rule 39. A party entitled to costs is provided with a bill-of-costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs when taxed are payable to the party awarded its costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Payment should be made to counsel for the party awarded costs or, if the party is not represented by

counsel, to the party pro se. Costs should be paid promptly.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

FRANCIS X. GINDHART
Clerk

CANEY V TREASURY, 91-3403
(MSPB — BN07528710110

Note: Pursuant to Fed. Cir. R. 47.8, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

91-3403

LORING M. CANEY, JR.,
Petitioner

v.

DEPARTMENT OF THE TREASURY,
Respondent.

Judgment

ON APPEAL from the MERIT SYSTEMS PROTECTION BOARD

in CASE NO(S). BN07528710110

A-2

This CAUSE having been considered, it is ORDERED and ADJUDGED:

Per Curiam (NIES, Chief Judge, ARCHER Circuit Judge and COHN, District Judge*):

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED Feb. 6, 1992

Francis X. Gindhart, Clerk

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* Judge Avern Cohn, Eastern District of Michigan, sitting by designation.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DOCKET NUMBER
BN07528710110

DATE: May 17, 1991

LORING M. CANEY, JR.,
Appellant

v.

DEPARTMENT OF THE TREASURY,
Agency.

Loring M. Caney, Jr., Belchertown, Massachusetts, pro se.
Elliot M. Carlin, Esquire, New York, New York, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

A-3

OPINION AND ORDER

The appellant petitions for review of the June 26, 1987 initial decision that dismissed his appeal pursuant to the parties' settlement agreement.[1] For the reasons set forth below, we DISMISS the petition for review as untimely filed.

BACKGROUND

The appellant filed a petition for appeal of his removal from his GS-12 position of Criminal Investigator (Special Agent) effective March 9, 1987. The parties subsequently filed a settlement agreement which, in pertinent part, the agency agreed to rescind the appellant's removal and replace it with the appellant's voluntary resignation effective the same date. In exchange, the appellant agreed to withdraw his removal appeal, but the parties acknowledged that the appellant's appeal of a one-day suspension remained pending.

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[1] Subsequent to the June 26, 1987 initial decision, the appellant filed three petitions for enforcement which were dismissed by the Board's Boston Regional Office. See *Caney v. Department of the Treasury*, Docket Nos. BN075287C0110 (Sept. 18, 1987), BN075287C9111 (Nov. 9, 1987), and BN075287C9122 (May 2, 1989). *See also Caney v. Department of the Treasury*, 36 M.S.P.R. 437 (1988) *aff'd*, 861 F.2d 729 (Fed. Cir. 1988)

On June 26, 1987, the administrative judge issued an initial decision dismissing the appeal as settled. The appellant filed a petition for review on December 10, 1990, seeking to set aside the settlement agreement. Because the petition appeared to be untimely, the Board issued an order to the appellant to show cause for the late filing. *See* 5 C.F.R. §1201.114(f). The appellant submitted a response, stating that his petition for review set forth the reasons for the late filing.

ANALYSIS

The initial decision specifically informed the appellant that he had until July 31, 1987, to file a petition for review with the Board if he believed that the settlement agreement was "unlawful, that the agreement was not freely entered into, or that it should otherwise be invalidated for reasons such as fraud or mutual mistake..." Initial Decision at 2. The time limit for filing a petition for review may be waived "for good cause shown" under 5 C.F.R. §1201.114(f). To establish good cause for an untimely filing, a party must show that it exercised diligence or ordinary prudence under the particular circumstances of the case. *See Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980).

In his petition for review, the appellant asserts that there is "new and heretofore unknown information." Specifically, the appellant states that the agency was documenting allegations of his misconduct based upon statements of an individual who was involved in drug-related misconduct and the theft of funds from another agency. The appellant concludes that, had he known that the agency's case was based on the statements of "a two-bit lying, dope-peddling thief...," he would never have entered into the settlement agreement. With its response to the appellant's petition, the agency proffers a pleading submitted by the appellant on or about August 1, 1990, in a civil action[2] challenging the one-day suspension. That pleading alluded to drug-related misconduct by the same individual as newly discovered evidence. *See* Petition For Review File, Tab 4, Exhibit 1.

The agency's submission tends to show that the appellant may have been aware of what he now claims to be "new" information at least four months before he filed his petition and he has not provided any explanation for

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[2] *Caney v. United States*, Civil Action No. 90-30064-F (D. Mass.). According to the agency, the U.S. District Court granted the Government's motion to dismiss the action on November 16, 1990. *See* Petition For Review File, Tab 4 at 2 n.2.

that delay. In any event, the appellant's submissions are not supported by either an affidavit or a statement signed under penalty of perjury, explaining why there is good cause for the late filing, consistent with 5 C.F.R. §1201.114(f) and the terms of our show-cause order. The appellant's submissions, contained therein, *see, e.g., Jones v. Office of Personnel Management*, 41 M.S.P.R. 146, 148 (1989). Even if we accept the assertions as true, however, the appellant's delay in waiting at least four months to file the petition remains unexplained. Thus, the appellant has not established that his actions were those of a reasonably prudent person.[3] *See, e.g., Armstrong v. Office of Personnel Management*, 36 M.S.P.R. 37, 40 (1987).

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[3] The appellant also asserts that he was misled into settling because, although he thought the one-day suspension grievance was still pending, the agency had decided on May 11, 1987, to accept the grievance examiner's recommendation and sustain the one-day suspension. We note, however, that the agency's decision letter of May 11, 1987, was apparently received by the appellant on May 14, 1987, prior to his signing the settlement agreement. Even if we accept the appellant's assertions as true, the agency informed the appellant by letter of August 17, 1987, that the administrative appeal procedure for the one-day suspension was exhausted. The appellant has not shown

The Board finds that the appellant has failed to establish good cause of the untimely filing of his petition, and that, therefore, waiver of the time limit is inappropriate. *See Shiflett v. U.S. Postal Service*, 839 F.2d 669, 670-74 (Fed. Cir. 1988) (the Board may grant or deny the waiver of a time limit for filing an appeal, in the interest of justice, after considering all the facts and circumstances of a particular case). *See also Pelatti v. Department of the Navy*, 45 M.S.P.R. 33, 36 (1990); *Hall v. Department of the Navy*, 44 M.S.P.R. 274, 276-77 (1990), *aff'd*, 914 F.2d 270 (Fed. Cir. 1990) (Table); *Vance v. Department of Agriculture*, 43 M.S.P.R. 48, 50 (1989), *aff'd*, 904 F.2d 45 (Fed. Cir. 1990) (Table); *Chiarella v. U.S. Postal Service*, 41 M.S.P.R. 16, 18-19 (1989), *aff'd*, 892 F.2d 1050 (Fed. Cir. 1989) (Table).

Accordingly, the petition for review shall not be considered.

ORDER

This is the final order of the Merit Systems Protection Board concerning the timeliness of the appellant's petition for review. The initial decision will remain the final deci-

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why he was prevented for over three years from timely filing his petition.

sion of the Board with regard to the merits of the case. 5 C.F.R. §1201.113.

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. *See* 5 U.S.C. §7703(a) (1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after the receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. §7703 (b) (1).

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D.C.